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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,154	03/30/2001	Robert A. Immerman	IN0191US (#90067)	6306

28672      7590      09/24/2002  
D. PETER HOCHBERG CO. L.P.A.  
1940 EAST 6TH STREET  
CLEVELAND, OH 44114

EXAMINER

WEINHOLD, INGRID M

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 09/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n N .

09/822,154

Applicant(s)

IMMERMAN, ROBERT A.

Examiner

Ingrid M Weinhold

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**FAOM after RCE Filed**

***Information Disclosure Statement***

The Information Disclosure Statement filed 8/20/02 was not considered as all the patents cited on the PTO-1449 were patents previously cited by the applicant on another PTO-1449 or previously cited by the examiner on a PTO-892 form.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 1, the specification does not disclose that there are two fastening arrangements. The specification needs to be amended to provide antecedent basis for this claim. No new matter will be permitted.

Claims 11-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 11, in line 5 of the claim, there is no antecedent basis for "the head" or "the neck".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 6-8, 11, 16-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Isenburg (Des. 121,813). See attached drawing for more details. Isenburg shows a first pair of horizontal, generally parallel, rigid wires (in yellow), a second pair of non-parallel rigid wires (in orange) transverse to and engaging the first pair of rigid wires defining a generally rectangular opening for receiving the head of a suction cup and for retaining the neck in the opening, and two fastening arrangements that hold the second pair of wires attached to the fixture (in blue). The suction cup has a compressible head attached to a neck, the neck is attached to an engagement member, the head is insertable into the opening and the neck is retained in the opening.

Claims 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Cura (Des. 210,833). Cura shows a first pair of parallel wires, and a second pair of parallel wires traverse to and engaging the first pair of wires and defining a rectangular opening that is capable of receiving the head of a suction cup and retaining the neck, and a fastening arrangement for fastening the device to a fixture. One pair of wires is horizontal and the other pair is vertical.

Claims 7, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Brewster (5,039,046). Brewster shows a device for attaching a suction cup to a fixture comprising a pair of rigid, vertical, generally parallel wires (21) defining an opening for receiving the head (23) of the suction cup (20) and for retaining the neck in the opening, and a fastening arrangement for fastening the device to the fixture.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5, and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Isenberg (Des. 121,813) in view of Macek (5,620,105). Isenberg shows all the features claimed in the applicant's invention but does not specifically state

that the fixture and device are made of metal since it is a design patent. Macek however shows another caddy and discloses that it is made of metal. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the caddy shown in Isenberg out of metal for durability purposes. The further limitation of the device being fastened to the fixture by welding, brazing, soldering or by using adhesive is a design choice and the applicant did not disclose any reason for why the device and fixture critically had to be fastened with one of those techniques. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have chosen to use well-known techniques such as welding, brazing, soldering or by using adhesive in order to securely fix the device to the fixture.

### ***Response to Arguments***

Regarding the applicant's argument towards the Cura reference, the rejection towards claim 1 using the Cura reference has been withdrawn. The applicant states that claims 7-9 are dependant from claim 1, but claim 7 is an independent claim. The rejection towards claims 7-9 using the Cura reference still stands.

Regarding the applicant's argument towards the Isenburg reference, the examiner's rejection stands as the examiner disagrees with the applicant's argument that the wires do not form a generally rectangular opening. The first wires in yellow and the second wires in orange form a generally rectangular opening in a 3-dimensional sense. The

applicant states that the orange wires are not parallel, but the claims do not claim that the second pair of wires are parallel, in fact they claim that they are not parallel. The applicant argues that each of the orange wires do not engage each of the yellow wires as there is one orange wire that only engages other orange wires. The examiner submits that it is only a portion of the orange wire that engages the other portions of the orange wire. The ends of the orange wire do in fact engage each yellow wire and therefore meets the claim. The applicant argues that the wires are slid over the suction cup instead of compressing the suction cup but as seen from the figure, the diameter of the head is larger than the width of the opening so it is inherent that the head is compressed in order to position it between the wires. Also the flexibility and ability to compress a suction cup is well-known in the art. In Isenburg, a bottom wire placed directly below the suction cup is not needed as gravity alone, as well as the weight of any items placed on the fixture and the diameter of the suction cup being larger than the opening will cause suction cup to remain in place. Examiner submits that any nick or tear in the neck of the suction cup will cause any suction cup to fail, or at least be weaker, not only in the Isenburg reference as submitted by the applicant.

Regarding the applicants arguments towards the Brewster reference, the applicant argues that the opening is not generally rectangular, that the wires are not vertical or parallel, and that there is no horizontal bottom. The examiner submits that the opening is generally rectangular as the term "generally" allows for broadness in interpretation of the claim language, which is still within the scope of the invention. The opening has a

"generally" rectangular opening with four sides, two being shorter than the other two. The wires are in fact vertical and the bend in one of the wires does not result in them not being parallel, especially "generally" parallel as claimed. Finally, the horizontal bottom is not claimed, only a pair of rigid, generally parallel wires are claimed, in which this reference meets this claim.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ingrid Weinhold whose telephone number is (703)-306-5762.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-3686 for informal documents, (703) 872-9326 for formal regular communication and (703) 872-9327 for After Final Communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Ingrid Weinhold  
Patent Examiner  
Technology Center 3600  
Art Unit 3632



LESLIE A. BRAUN  
SUPERVISORY PATENT EXAMINER



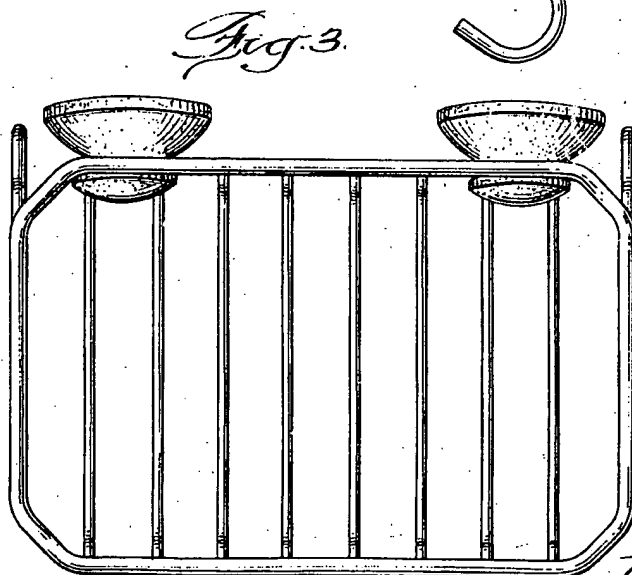
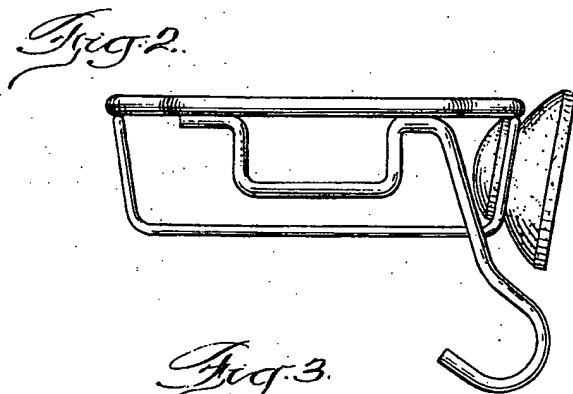
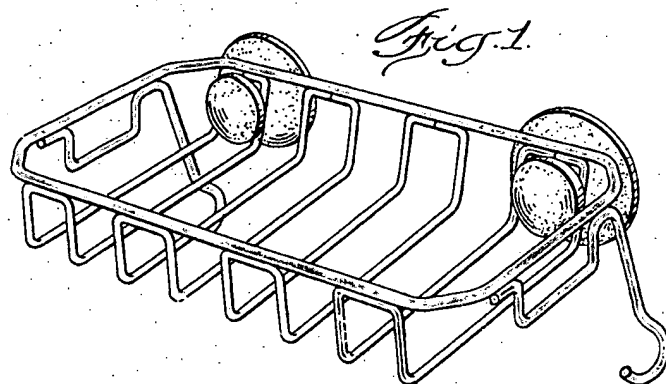
Aug. 6, 1940.

S. ISENBURG

Des. 121,813

SOAP DISH

Filed April 3, 1940



Inventor  
Stanley Isenberg  
By *Manning, Carroll & Hay*